IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

CRP.No. 30 of 2006()

AGINST THE ORDER OF APPELLATE AUTHORITY (LR) ALAPPUZHA DATED 7.11.2005 IN A.A.NO.35/03 IN OA.247/1993 of THE LAND TRIBUNAL, THIRUVANANTHAPURAM.

.....

REVN. PETITIONER:

P.THANKAMONY, MANKULATHU VEEDU,
KIZHAKKEPATTOM, MARAPPALAM, DIVAKARAN ROAD,
PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: RESPONDENTS & STATE

---

1. PONNAMMA, MANKULATHU VEEDU,
KIZHAKKEPATTOM, MARAPPALAM P.O.,
THIRUVANANTHAPURAM (DIED).

2. VISWANATHAN, MANKULATHU VEEDU,
KIZHAKKEPATTOM, MARAPPALAM P.O.,
THIRUVANANTHAPURAM.

3. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.V.T.K. MOHANAN FOR R3
SRI.K.B.PRADEEP FOR R2

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/01/2007 THE COURT ON 24/01/2007 PASSED THE FOLLOWING:

APPENDIX

Annexure -A:- Certified copy of order dated 30.1.2006 in E.P.265/04 in O.S.No.2557/93 on the file of the Court of the Principal Munsiff, Thiruvananthapuram.

Annexure-B:- True photocopy of the judgment dated 2.3.2005 in W.P.(C) No.33689 of 2004.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

==========

C.R.P.NO.30 OF 2006

==========

Dated this the 24th day of January, 2007

O.R.D.E.R

Petitioner is the applicant before Land Tribunal, Thiruvananthapuram and appellant before Appellate Authority(L.R.), Alappuzha. Respondents 1 and 2 are respondents before the Land Tribunal and Appellate Authority. Petitioner filed O.A.247/93 before the Land Tribunal for purchase of kudikidappu right claiming that she is a kudikidappukari. Land Tribunal holding that petitioner did not adduce any oral or documentary evidence to prove that she has been in possession of the building prior to 1.4.1964 found that she is not entitled to the kudikidappu right. Petitioner challenged that order before Appellate Authority (LR), Alappuzha in A.A.35/03. The Appellate Authority after reiterating the contentions raised by both the petitioner and respondents dismissed the appeal finding that on

going through the lower court records and hearing their counsel there is no merit in the appeal. This petition is filed challenging that order under section 103 of Kerala Land Reforms Act.

2. Learned counsel appearing for petitioner and respondents were heard.

3. Learned counsel appearing for petitioner argued that both the Land Tribunal and the Appellate Authority did not consider the entitlement of petitioner for kudikidappu right and instead dismissed the application for the sole reason that petitioner did not establish his possession prior to 1.4.1964 and therefore petitioner is not entitled to kudikidappu right. The question whether a person in possession of a hut who was put in possession of that hut even after 1.1.`70 is entitled to claim kudikidappu,if all the other ingredients are established, is no more res integra, in view of the decision of this Court in **Vidhyadharan v. Sivadas (2001(2) KLT 605).** Therefore the very basis of rejection of kudikidappu right claimed by petitioner by the Land Tribunal and the Appellate Authority is

unsustainable.

4. Then the question is whether the petitioner is entitled to kudikidappu right?. This question was not independently considered by either the Land Tribunal or the Appellate Authority. Learned counsel appearing for petitioner argued that even if the petitioner did not succeed in establishing his case that he has been put in possession of the land by the mortgagee, it is the specific case of respondents, in O.S.2557/03 filed by them for redemption of the mortgage, where petitioner was impleaded as eighth defendant, that petitioner was inducted into possession by the mortgagee. It was argued that in that case if petitioner is not having any other land, where he could erect a homestead and the building is a hut, being its cost of construction less than Rs.750/- or rental value at the time of construction less than Rs.5/-, being a person permitted to occupy the building by the mortgagee a person in lawful possession of the land she is entitled to claim kudikidappu and this question was not considered by the Land Tribunal or Appellate Authority and so the case has

to be remitted back to the Land Tribunal for considering the question afresh. Learned counsel appearing for respondents vehemently argued that petitioner has no specific case whether she was permitted to occupy the land or hut or whether she constructed the homestead and a decree for redemption and recovery of possession was already passed in O.S.2557/93 and in such circumstance, case need not be remanded and on the materials this court can find that petitioner is not entitled to kudikidappu right.

5. True, in the application filed before the Land Tribunal for purchase of kudikidappu right, petitioner did not specifically plead with regard to either the entrustment or whether entrustment was of the land and she constructed the homestead or she was entrusted with the hut. What was contended in the petition was that she has been in possession of the hut since 1965 and its cost of construction was Rs.200/- and there is no liability to pay rent. Learned counsel appearing for respondents also pointed out that in the written statement filed before Munsiff Court in

O.S.2557/93, case of the petitioner was that mother of respondents permitted petitioner to put up a hut in the plaint schedule property on 16.8.65 and if so, it could only be a homestead and the case could only be that petitioner was put in possession of the land by mortgagor and not by mortgagee. Learned counsel appearing for petitioner pointed out that even before Appellate Authority, as seen from the order, what was contended by respondents was that mortgagee put petitioner in possession of property and even if petitioner did not establish the claim that she was entrusted with the land and she constructed a homestead, the case pleaded by respondent enables petitioner to claim that admitted facts satisfies the definition of kudikidappukaran as provided under sub section (25) of Section 2 and therefore petitioner is a kudikidappukari. On hearing both the counsel, it is clear that the question whether petitioner is a kudikidappukari, as defined under sub section (25) of Section 2, is to be considered first by Land Tribunal. As the Land Tribunal and the Appellate Authority did not consider this question, that

question cannot be decided in this revision for the first time in exercise of the revisional powers of this court. The order of Appellate Authority and the Land Tribunal are set aside. O.A.247/93 is remanded to the Land Tribunal, Thiruvananthapuram for fresh disposal in accordance with law. The Land Tribunal is directed to dispose of O.A.247/93 as expeditiously as possible, at any rate, within four months from the date of receipt of records. The parties are entitled to adduce further evidence, if they chose.

Civil Revision Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006